

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	00-0714
Illinois Power Company	:	
	:	
Reconciliation of revenues collected	:	
under gas adjustment charges with	:	
actual costs prudently incurred.	:	

REPLY BRIEF OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION

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**REPLY BRIEF OF THE STAFF OF
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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through its attorneys, and hereby submits a Reply Brief in this matter. This Reply Brief addresses only certain points raised by Illinois Power Company (“IP” or the “Company”) in its Initial Brief in opposition to Staff’s positions. However, except as provided herein, Staff reaffirms all of its positions as stated in its Initial Brief.

I. THE COMPANY’S DECISION TO RETIRE THE FREEBURG PROPANE FACILITY WAS IMPRUDENT

Staff continues to recommend that the Commission find IP’s decision to retire the Freeburg propane facility, and the replacement gas costs associated with the lost Freeburg facility capacity, as imprudent. IP makes several arguments in its Initial Brief that Staff discusses in its Initial Brief. Staff does not intend to repeat those arguments here. However, IP does raise a number of other issues, some of them for the first time, which Staff discusses below.

A. Area Development

IP uses the recent development in the area as a basis for retiring the facility. (IP Initial Brief at 6.) Staff provides a discussion of the issue in its Initial Brief. (Staff Initial Brief at 14-15.) At this late stage in the proceeding, IP makes several new arguments, which Staff is now forced to refute.

IP notes that Highway 13 was recently widened and resurfaced. (IP Initial Brief at 6-7.) IP employs this fact as an indication of an increase in the future use of this road. (Id. at 7.) It is unfortunate that IP saves this conclusion for its Initial Brief and provides no support for its projection. The work completed on Highway 13 could be a function of the road's past condition, or some other circumstance. The reason is certainly not in the record of this proceeding. Therefore, Staff recommends that the Commission disregard this newly-created and unsubstantiated argument.

B. NIMBY

For the first time in this proceeding, IP raises the issue of “not in my backyard” (a.k.a. NIMBY) in connection with the continued operation of the facility. (Id.) Staff challenges the use of NIMBY as a basis for retirement of an existing facility. Normally, NIMBY is a problem encountered when finding a location to site new facilities- not facilities that have been in place for over 30 years.

Nevertheless, even if IP expected a NIMBY problem at the facility, there is still the problem of IP's natural gas storage field. The major facilities associated with IP's Freeburg natural gas storage field are in the same location as IP's Freeburg propane facility. IP does not propose to retire its Freeburg storage field, which is subject to the same NIMBY scrutiny as the propane facility. IP fails to provide any support for a

NIMBY problem within the area or to differentiate this NIMBY between its two facilities that are at the same location. Therefore, Staff recommends that the Commission reject IP's unsupportable use of NIMBY as a reason to retire the Freeburg propane facility.

C. Refilling of the Propane Facility

In relation to IP's alleged NIMBY problem is the "rumbling" of 90 tank trucks that are necessary to fully replenish the propane supply of the facility. (Id.) However, 90 trucks are needed only if the propane facility needs to be completely refilled. (Id.) IP admits that the facility was only called upon a total of six times during the five-year period 1995 through 1999. (Id. at 4.) This equates to operating, on average, slightly more than one time a year. Assuming the facility operated at full capacity on each of those occasions, which it likely did not, the amount of propane necessary for refill is one-third the total capacity (or 30 trucks) during the year.

Even if one assumes the facility is completely depleted of its propane supply, the facility only operates in the winter. IP has at least seven non-winter months to refill the facility. Seven months equates to at least 28 weeks or an average of about three trucks per week to refill the facility. Further, IP notes that there is also the possibility of conducting the propane refills via rail cars rather than trucks since a rail line runs near the facility. (Id. at 3, footnote 2.) At worst, the area could experience an average of three truck deliveries to the facility per week for seven months out of the year. This hardly constitutes a basis for retiring the facility.

D. Hypothetical Question

Finally, IP accuses a Staff witness of dodging a question during the cross-examination hearing. (Id. at 13, footnote 12.) In fact, the witness answered truthfully

and also provided IP with the means to obtain the answer to its question. Rather than make use of the information Staff provided, IP instead misconstrues the exchange as another reason to retire the facility. IP asked a hypothetical question that assumed if IP would upgrade the facility, but at a later date determined it was no longer prudent to operate its facility; would the Commission allow it to recover the unrecovered portion of its initial investment from its customers? (Id.) Staff's witness responded that he did not know the answer, since he thought that was an area normally handled by the Accounting Department, but that the witness recalled a similar event in the past that involved Peoples Gas Light and Coke Company ("Peoples") and its SNG facility. (Tr. at 41.)

If IP had followed up on the information provided by Staff, IP could have located the Commission's Order from the Peoples rate case, Docket No. 95-0032, that discusses the retirement of Peoples' SNG facility. This Order discusses the facility retirement and the accounting treatment for the retired assets. (Order at 8-11) In fact, the Commission cites a previous Illinois Power Company Order, Docket No. 84-0480, as part of the basis for its decision. IP had adequate opportunity to review prior Commission precedents on this issue, even a case concerning itself. Instead, IP asked a hypothetical question about how the Commission could rule on a situation in the future to a Staff witness who not only answered the question but also reminded IP of a recent Commission decision on the topic. Instead, IP attempts to turn it around and blame Staff for not providing a definitive answer on how the Commission would rule in the future on the hypothetical situation. Staff witnesses were available for cross-examination. If the Company did not believe Staff fully answered a question on cross-exami-

nation, a follow up question was in order. IP's attempt should be seen for what it is: another last minute attempt to further cloud the issue before the Commission.

E. Conclusion

Staff continues to support its position that IP was imprudent when it decided to retire the Freeburg propane facility. The basis for Staff's argument is discussed in full in its Initial Brief. In contrast, IP's Initial Brief reveals several new arguments that the Company failed to advance in the course of the proceeding. However, it hardly matters since IP, with the exception of blind assertions, fails to provide support for any of these new arguments. Simply put, IP lacks a supportable basis for retiring its Freeburg facility. Staff recommends the Commission find IP's decision to retire the facility imprudent.

II. THE COMPANY'S DECISION TO RETIRE THE GILLESPIE STORAGE FIELD WAS IMPRUDENT

Staff continues to recommend that the Commission find IP's decision to retire the Gillespie storage facility, and the replacement gas costs associated with the lost Gillespie facility capacity, as imprudent. IP makes several arguments in its Initial Brief that Staff also discussed in its Initial Brief. For the purposes of this Reply Brief, Staff discusses only the additional issues raised by IP in its Initial Brief.

A. Operational Concerns

IP claims that if the Gillespie compressor station were to fail or trip offline, the Company would be unable to raise pressure within the surrounding distribution system quickly enough to prevent service outages. (IP Initial Brief at 17.) IP also claims that service consequences caused by adverse external events affecting the distribution

system (such as damage from a contractor) would be exacerbated due to the system operating at reduced pressure. (Id.)

IP completely fails, however, to demonstrate any historical problems associated with the compressor at the Gillespie storage field that gives rise to concern with the unit tripping off line. Also, IP never demonstrated why it suddenly had concerns with the manner in which it operated the Gillespie storage field, even though it had operated the field since 1958. (Id. at 16.) In addition, IP notes that the Gillespie field normally only operates as a peaking facility during the most severely cold days. (Id.) IP fails to explain why contractor damage would be more likely to occur on a severely cold day. Logic suggests that contractors would be less likely to operate their equipment on extremely cold days. IP's hastily formulated arguments are incredulous and should be disregarded.

B. Commodity Adjustment

IP asserts several reasons why there should not be a commodity savings amount allowed for Staff's proposed disallowance associated with the retirement of the Gillespie storage field. (IP Initial Brief at 23.) In essence, the Company is arguing that Staff's Gillespie adjustment is incorrect since that field would have not been used during late 2000.

In contradiction to its own argument, however, IP claims that due to the abnormally cold weather that had occurred during November and December, the Company's storage inventories were being depleted faster than anticipated. (Id.) This conflicts with IP's argument that it would not have used the Gillespie storage field since that supply was normally not used early in the heating season unless absolutely necessary.

IP also claims that for the time period Staff estimated IP would use the Gillespie field (December 17-22, 2000), it was not close to full utilization of its storage field deliverabilities. (*Id.*) IP argues, therefore, that since it was not close to fully utilizing its field deliverabilities, the Gillespie field would not have been used. However, as IP admits, because of the early cold weather in November and December, gas was withdrawn from storage fields to the extent deemed not critical to maintaining peak day coverage reliability and the physical and contractual limitations of the fields. (*Id.*) A better explanation for the low utilization of deliverabilities is simply that IP was conserving storage supplies for use later in the heating season. IP's arguments clearly demonstrate that IP continues to invent justification for the Gillespie closure in an effort to discredit Staff's commodity adjustment.

C. Conclusion

IP argues the projected use for Gillespie during the time period should be zero. However, Staff's review of the information overwhelmingly demonstrates that IP would have withdrawn gas from the Gillespie facility during the period in question. Therefore, Staff recommends that the Commission apply Staff's proposed commodity savings adjustment to the disallowance associated with the retirement of the Gillespie storage field.

III. THE COMPANY'S DECISION TO ENTER INTO TWO NATURAL GAS SUPPLY CONTRACTS WAS IMPRUDENT

Staff's position that IP failed to consider all the relevant factors when assigning its firm supply contracts from the reconciliation period has not changed. Staff continues to believe that IP should have relied upon more information than just the reservation

costs for those contracts that had commodity cost differences between competing bids. Staff's reasoning for its position is contained in its Initial Brief and is not repeated here. (Staff Initial Brief at 27-28.) IP's Initial Brief discusses three issues not addressed in Staff's Initial Brief. Staff does not agree with IP's arguments for the reasons stated below.

A. Standard of Prudence

IP claims that Staff's position regarding IP's policy of selecting its winning firm gas supply contracts based upon the lowest reservation cost is entirely hindsight-based and is not based on any identified standard of prudence. (IP Initial Brief at 27.) To support this argument, IP claims that Staff failed to show IP how it should have analyzed these contracts, and which contracts IP should have selected from the proposals received, based upon information that would have been available at the time the decisions were made. (Id.) Further, IP purports that Staff should have estimated the likely amounts of usage for each contract and then employ those estimates to determine whether IP should have accepted other contract proposals or enter into swing contracts as it did. (Id.)

IP's arguments are absurd. Staff's testimony and Initial Brief discuss how IP should have taken into account a break-even load factor analysis prior to reaching its decision on firm gas supply contracts. In particular, Staff discusses a gas supply contract that IP signed with Dynegy Marketing and Trade ("DMT"). Staff calculates a break-even load factor amount based upon the commodity and reservation difference that existed between the DMT contract and the next best alternative as 25%. (Revised Staff Ex. 4.0 at 23; Staff Initial Brief at 28.) Thus, if IP uses less than 25% of the volume

available from that contract, the contract with the lower reservation fee provides the lowest total gas supply costs. (Id.) However, if IP uses more than 25% of the volume from that contract, the contract with the lower commodity costs provides the lower total gas supply costs. (Id.)

A historical review of IP's usage rates for its swing contracts indicates that IP should account for commodity cost differences. During the winter of 1999-2000, IP entered into 16 firm swing contracts whose average load factor was 26.8%. (Id.) This is higher than the break-even load factor calculated for the DMT contract. This value was available to IP prior to its decision to enter into the DMT and the other swing contract at issue in this proceeding. However, IP failed to consider this information when making its decision to enter into those contracts.

IP's practice of ignoring commodity cost differences between competing offers when assigning winning gas supply contracts is not a prudent practice. A simple comparison between IP's past usage rates for its swing contracts and the break-even analysis of alternative supply bids should have caused IP to consider more than just reservation costs when assigning its firm winter swing contracts.

B. Conflict With 1999 Reconciliation Position

IP claims that Staff's recommended adjustment is in conflict with Staff's prior position on this subject. (IP Initial Brief at 28.) IP's support for this claim is a statement from its witness in Docket No. 99-0477, IP's 1999 reconciliation proceeding, who stated that during 1999, IP used the lowest reservation cost methodology as the basis for selecting its firm winter supply contracts. (Id.) IP further notes that Staff found no reason to question the prudence of this activity. (Id.) Finally, the Commission, in Finding 4

from the Order in Docket No. 99-0477, noted the evidence indicated that IP acted prudently in its purchases of natural gas during calendar year 1999. (Id.) Staff agrees that the Order from IP's 1999 reconciliation proceeding makes these statements. However, Staff does not agree with IP's conclusion regarding those statements.

IP's argument fails to provide any information that indicates the purchasing decisions faced by IP in 1999 bear any similarity to the decisions that IP faced in 2000. Specifically, did any of the contracts signed by IP in 1999 have alternative bids that offered a lower commodity cost but a higher reservation cost that IP could have accounted for prior to signing the contracts? IP has the burden to show that its gas contracts were prudently entered into. If there was no commodity difference between competing bids, then selecting the gas supply contracts on the basis of lowest reservation costs was the appropriate strategy to employ. However, IP fails to supply any information that its 1999 purchasing activity encountered the same set of circumstances that were encountered in its 2000 reconciliation period. Without the specific information regarding the alternative bids that was available to IP in 1999, any attempt to reach a conclusion from statements made in 1999 is pure speculation. Further, IP was remiss in its failure to discuss this alleged conflict during the course of the instant proceeding. If IP had made the same type of decisions with similar circumstances in 1999 as in 2000, then Staff would have expected IP to bring this conflict to light in its testimony or the cross of Staff's witnesses. However, IP never raised the issue until its Initial Brief. IP's failure to advance this argument at an earlier date suggests the 1999 reconciliation was not comparable to the review conducted in the instant proceeding.

C. Aggregate Savings from Contracts

IP also attempts to claim that overall it incurred gas cost savings from its methodology of solely using reservation costs as the basis for selecting its firm gas supply contracts. (IP Initial Brief at 29) In particular, IP claims there are five contracts signed during the reconciliation period that had alternative bids that provided lower commodity prices, but higher reservation costs. (Id.) IP claims that overall it realized a total savings of \$16,815 during 2000 when comparing those five contracts to their alternatives. (Id.)

However, it is Staff's position that two of those five contracts should not be included in that comparison. Two of the five contracts in question have a commodity rate difference that equals the reservation rate difference. (Revised IP Ex. 3.5, Contracts 2 and 4.) The same rate difference means that it is impossible for the contract with a lower commodity cost to have lower total gas supply cost than the contract with the lowest reservation fee. The reason this occurs is that the break-even point for both of those contracts is at a 100% load factor usage rate. Therefore, for those two contracts it is obvious that they were the prudent selection for IP to make and should not have been included in IP's analysis.

Excluding the comparison made for Contracts 2 and 4 in Revised IP Exhibit 3.5 drastically changes the results of IP's analysis. In fact, IP's analysis shows a total gas cost increase to ratepayers, rather than a savings. For the remaining three contracts that had an alternative bid with a lower commodity rate, IP's selection of two of them caused it to incur higher total gas costs. In other words, IP was correct only one-third of the time when selecting the best contract for its ratepayers.

D. Conclusion

IP's failure to follow prudent purchasing practices caused it to incur an additional \$3,000 in gas supply costs during the reconciliation period. IP, not its customers, is responsible for those decisions. Therefore, IP should be held responsible for those costs. Staff recommends that the Commission disallow \$3,000 in gas supply costs incurred during the reconciliation period based on IP's failure to follow prudent purchasing practices.

IV. CONCLUSION

WHEREFORE, for the reasons set forth in Staff's Initial Brief and herein, the Staff of the Illinois Commerce Commission respectfully requests that the Commission adopt Staff's recommendation to adjust Illinois Power Company's 2000 PGA reconciliation by the amount of \$1,717,678. In addition, Staff requests that the Commission order the Company to implement Factor O refunds of \$1,614,435 for Rider A, \$96,290 for Rider B Demand, and \$6,953 for Rider B Commodity, as indicated in Staff Exhibit 3.0, Schedule 1.0, page 1 of 4, in the first monthly PGA filing after entry of the final Order in this proceeding.

Respectfully submitted,

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